

TCEQ DOCKET NO. 2023-0566-DIS

**APPLICATION FOR THE CREATION OF § BEFORE THE TEXAS
SHANKLE ROAD MUNICIPAL UTILITY § COMMISSION ON
DISTRICT OF ELLIS COUNTY § ENVIRONMENTAL QUALITY**

APPLICANT’S RESPONSE TO HEARING REQUESTS

TO THE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

Steve Selinger, on behalf of Shankle Road Municipal Utility District of Ellis County (“Applicant”) files its Response to Hearing Requests and shows as follows:

I. Introduction and Procedural History

The proposed Shankle Road Municipal Utility of Ellis County (the “District”) contains approximately 181.5664 acres located in Ellis County. The proposed District is not located within any corporate limits or extra territorial jurisdiction of any city or town.

Applicant filed its Petition for creation of the District on August 10, 2022. The Petition was deemed administratively complete on August 23, 2022. Applicant published the Notice of District Petition in the Ennis News on December 4, 2022 and December 11, 2022, a newspaper generally circulated in Ellis County. On November 29, 2022, notice of the Petition was posted in the Ellis County Courthouse. Subsequently, the Texas Commission on Environmental Quality (the “Commission”) received a number of requests for a contested case hearing.

The Office of the Chief Clerk sent notice of the agenda setting for the Commission’s consideration of the hearing requests and setting the hearing on the requests for July 10, 2023.

As more fully set forth below, a contested case hearing is not warranted in this matter, and Applicant’s Petition should be granted.

II. Applicable Law

A municipal utility district (“MUD” or “district”) may be created under and subject to the authority, of Article XVI, Section 59, of the Texas Constitution and Chapters 49 and 54 of the Texas Water Code, and the Commission’s administrative rules. A district may be created for the following purposes:

- (1) the control, storage, preservation, and distribution of its storm water and floodwater, the water of its rivers and streams for irrigation, power, and all other useful purposes;
- (2) the reclamation and irrigation of its arid, semiarid, and other land needing irrigation;
- (3) the reclamation and drainage of its overflowed land and other land needing drainage;
- (4) the conservation and development of its forests, water, and hydroelectric power;
- (5) the navigation of its inland and coastal water;
- (6) the control, abatement, and change of any shortage or harmful excess of water;
- (7) the protection, preservation, and restoration of the purity and sanitary condition of water within the state; and
- (8) the preservation of all natural resources of the state.

TEX. WATER CODE § 54.012.

To create a MUD, a petition requesting creation shall be filed with the Commission. *See* TEX. WATER CODE § 54.014. The petition shall be signed by a majority in value of the holders of title of the land within the proposed district, as indicated by the tax rolls of the central appraisal district. *See id.* The petition shall: (1) describe the boundaries of the proposed district by metes and bounds or by lot and block number; (2) state the general nature of the work proposed to be done, the necessity for the work, and the cost of the project as then estimated by those filing the petition; and (3) include a name of the district which shall be generally descriptive of the locale of the district. *See* TEX. WATER CODE § 54.015, 30 TEX. ADMIN. CODE § 293.11(a) and (d).

If all of the proposed district is to be located outside of the corporate limits of a municipality, the commissioners court of the county in which the district is to be located may review the petition for creation and other evidence and information relating to the proposed district that the commissioners consider necessary. *See* TEX. WATER CODE § 54.0161(a). If the commissioners court votes to make a recommendation to the Commission, the commissioners court shall submit to the Commission, at least 10 days prior to the hearing on the petition, a written opinion stating whether or not the county would recommend the creation of the proposed district and stating any findings, conclusions, and other information that the commissioners court thinks would assist the Commission in making a final determination on the petition. *See id.* at § 54.0161(b). The Commission shall consider the written opinion submitted by the county commissioners. *See id.* at § 54.0161(c).

The Commission shall grant the petition if it conforms to the requirements of Texas Water Code section 54.015 and the project is feasible, practicable, necessary, and further, would be a benefit to the land to be included in the district. *See* TEX. WATER CODE § 54.021(a). In determining if the project is feasible, practicable, necessary, and beneficial to the land included in the district, the Commission shall consider:

- (1) the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;
- (2) the reasonableness of projected construction costs, tax rates, and water and sewer rates; and
- (3) whether or not the district and its system and subsequent development within the district will have an unreasonable effect on the following:
 - (A) land elevation;
 - (B) subsidence;
 - (C) groundwater level within the region;
 - (D) recharge capability of a groundwater source;
 - (E) natural run-off rates and drainage;
 - (F) water quality; and
 - (G) total tax assessments on all land located within a district.

TEX. WATER CODE § 54.021(b).

The applicant must publish notice of the petition to create a district once a week for two consecutive weeks in a newspaper regularly published or circulated in the county where the district is proposed to be located not later than the 30th day before the date of the Commission's decision on the application. *See* TEX. WATER CODE §§ 49.011(b), 54.018. Additionally, the applicant must post notice of the petition on the bulletin board used for posting legal notices in each county in which all or part of the proposed district is to be located. *See* 30 TEX. ADMIN. CODE § 293.12(b)(2). The Commission shall hold a public hearing if requested by the Commission, Executive Director, or an "affected person" under the factors in 30 Texas Administrative Code, Chapter 55 and Texas Water Code section 49.011(c).

A hearing requestor must make the request in writing within the time period specified in the notice and identify the requestor's personal justiciable interest affected by the application, specifically explaining the "requestor's location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public." 30 TEX. ADMIN. CODE § 55.251(b)—(d).

An affected person is "one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest." 30 TEX. ADMIN. CODE § 55.256(a). Governmental entities with authority under state law over issues contemplated by the application may be considered affected persons. *See* 30 TEX. ADMIN. CODE § 55.256(b).

The Commission shall grant a request for a contested case hearing if: (1) the request is made by the applicant or the ED; or (2) the request is made by an affected person, complies with the requirements of section 55.251, is timely filed with the chief clerk, and is made pursuant to a right to hearing authorized by law. *See* 30 TEX. ADMIN. CODE § 55.255(b).

III. Analysis of the Hearing Requests

A. Public Official Requests

1. Representative Brian Harrison's Hearing Request Should be Denied.

Representative Brian Harrison has requested a contested case hearing on the basis that he represents the area where the proposed District would be located in the Texas House of Representatives. Representative Harrison failed to raise any issue within the scope of what the Commission may consider when reviewing the Petition. *See* TEX. WATER CODE § 54.021(b). In addition, he failed to articulate any way that he would be affected by the proposed District in a manner not common to members of the general public. *See* 30 TEX. ADMIN. CODE § 55.251 § (c)(2). As such, Representative Harrison's hearing request does not demonstrate how he meets the definition of an affected person.

2. Senator Bob Hall's Hearing Request Should be Denied.

Senator Bob Hall has requested a contested case hearing on the basis that he represents the area where the proposed District would be located in the Texas State Senate. Senator Hall failed to raise any issue within the scope of what the Commission may consider when reviewing the Petition. *See* TEX. WATER CODE § 54.021(b). In addition, he failed to articulate any way that he would be affected by the proposed District in a manner not common to members of the general public. *See* 30 TEX. ADMIN. CODE § 55.251 § (c)(2). As such, Senator Hall's hearing request does not demonstrate how he meets the definition of an affected person.

B. Requests for Contested Cases Hearing

Over 266 proposed parties have requested a contested case hearing on various bases. None of the requests for contested case hearing meet the legal requirements of an affected person. None of the requests for contested case hearing identify any personal justiciable interest as required under the Texas Administrative Code. Specifically, the requests have not shown that any person

would be affected by the proposed District in a manner not common to members of the general public or have statutory authority over or an interest in the issues relevant to the Application. Therefore, the requests do not meet the definition of an “affected person” and all of the hearing requests should be denied.

IV. Conclusion

None of the requests for contested case hearing identify any personal justiciable interest as required under the Texas Administrative Code. Specifically, the requests have not shown that any person would be affected by the proposed District in a manner not common to members of the general public or have statutory authority over or an interest in the issues relevant to the applications. Therefore, the requests do not meet the definition of an “affected person” and the hearing requests should be denied.

WHEREFORE, Applicant requests that the hearing requests be denied and that the Petition be granted.

Respectfully submitted,

COATS | ROSE

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CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2023, the original of Applicant's Response to Hearing Requests was filed with the Chief Clerk of the TECQ and a copy was served on all person listed below either via hand delivery, facsimile transmission, electronic mail, and/or by deposit in the U.S. Mail.

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668 SHANKLE RD
ENNIS TX 75119-0106

NICOLA YSEN, JANET
668 SHANKLE RD
ENNIS TX 75119-0106

NOACK, KEVIN
314 BULLDOG WAY
PALMER TX 75152-9767

NOVY, ADOLPH FRED
740 NOW RD
ENNIS TX 75119-0002

NOW, BRYAN ALAN
606 NOW RD
ENNIS TX 75119-2072

NOW, DALE
1218 NOW RD
ENNIS TX 75119-1418

NOW, DAVID
610 NOVY RD
ENNIS TX 75119-2072

NOW, HELEN
4755 FM 879
PALMERTX 75152-8181

NOW, JAMES
201 SPRING CREEK DR
WAXAHACHIE TX 75165-5311

NOW, STEVEN
704 NOW RD
ENNIS TX 75119-0002

NOW, THERESA
1218 NOW RD
ENNIS TX 75119-1418

O'BRIEN, CHRISTINA & STEVE
1136 SHANKLE RD
ENNIS TX 75119-0116

ORR, LINDSAY
105 MEADOWLARK DR
PALMER TX 75152-8244

O'CONNOR, BRITTANY
121 SLATE ROCK RD
ENNIS TX 75119-0277

PACE, CHRIS
6910 FM 879
PALMER TX 75152-9102

PACE, KELSIE
6910 FM 879
PALMER TX 75152-9102

PATTERSON, JANICE & STEPHEN R
3631 FM 85
ENNIS TX 75119-0510

PERRY, STEVE
190 NOVY RD
ENNIS TX 75119-1404

POSS, JOE
106 BECK ST
PALMER TX 75152-9695

POUZAR ALSTON, CAROL
1013 SHANICLE RD
ENNIS TX 75119-0115

POUZAR, ADELL
1013 SHANKLE RD
ENNIS TX 75119-0115

POUZAR, CHARLIE J
1013 SHANKLE RD
ENNIS TX 75119-0115

POUZAR, JEFF
501 TROJACEK RD
ENNIS TX 75119-1469

PRACHYL, ALAN F
7686 FM 660
ENNIS TX 75119-2075

PRACHYL, DEBORAH
7686 FM 660
ENNIS TX 75119-2075

RAY, KATHY & RANDY LYNN
1271 SHANKLE RD
ENNIS TX 75119-0119

READ, M
929 EASON RD
ENNIS TX 75119-0895

REJCEK, DENISE & JERRY
6171 FM 879
ENNIS TX 75119-1672

REJCEK, ADELL
7980 FM 660
ENNIS TX 75119-0159

REJCEK, MR JAMES E
6145 FM 879
ENNIS TX 75119-1672

ROBIE, BENNETT M
415 NOVY RD
ENNIS TX 75119-1475

ROBIE, PAUL
415 NOVY RD
ENNIS TX 75119-1475

ROBIE, STEPHANIE
415 NOVY RD
ENNIS TX 75119-1475

ROBINSON, EUGENE J
3940 NORTHAVEN RD
DALLAS TX 75229-2735

RODRIGUEZ, MR JUAN
241 CHERRY POINT DR
PALMER TX 75152-8221

ROGERS, EMILY W
BICKERSTAFF HEATH DELGADO ACOSTA LLP
BLDG 1 STE 300
37115 MOPAC EXPY
AUSTIN TX 78746-8013

ROSSON, JAMIE
3063 UNION HILL RD
ENNIS TX 75119-0155

ROSSON, KEITH
3063 UNION HILL RD
ENNIS TX 75119-0155

ROSSON, SUSIE
830 OLD GIN RD
ENNIS TX 75119-0198

ROSSON, TUCKER
3063 UNION HILL RD
ENNIS TX 75119-0155

ROSSON, WALKER
3063 UNION HILL RD
ENNIS TX 75119-0155

ROSSON, MR ROBERT KEITH
3063 UNION HILL RD
ENNIS TX 75119-0155

RUETHER, KEITH
315 CHMELAR RD
ENNIS TX 75119-0040

SCHIFFNER, MR JUSTIN
7268 FM 879
PALMER TX 75152-9110

SEVERSON, DR. RANDOLPH
903 N PRESTON ST
ENNIS TX 75119-3023

SHACKELFORD, DAVID
3259 CRISP RD
ENNIS TX 75119-1482

SHACKELFORD, TINA
3259 CRISP RD
ENNIS TX 75119-1482

SIMS, WILLIAM D
7191 FM 660
ENNIS TX 75119-0162

SKRIVANEK, GEORGE
3354 CRISP RD
ENNIS TX 75119-7428

SLADECEK, MARY NELL
9163 FM 660
ENNIS TX 75119-0145

SLOVACEK, STACEY & TIM
617 ARLETA LN
ENNIS TX 75119-5226

SLOVAK, DARREN
PO BOX 369
ENNIS TX 75120-0369

SLOVAK, DEBBIE
PO BOX 369
ENNIS TX 75120-0369

SPENCE, KASIE
6160 FM 660
ENNIS TX 75119-0209

STIFF, DAVID & RENAE
1128 SHANKLE RD
ENNIS TX 75119-0116

STIFF, RENAE
1128 SHANKLE RD
ENNIS TX 75119-0116

SURRATT, DAVID ALFRED
RIDDLE & WILLIAMS
PO BOX 310
PALMER TX 75152-0310

SURRATT, DAVID ALFRED
RIDDLE & WILLIAMS
7738 FM 879
PALMER TX 75152-9106

SVEHLAK, EVELYN
2816 E HIGHWAY 34
ENNIS TX 75119-1433

SVEHLAK, FRANKIE
2816 E HIGHWAY 34
ENNIS TX 75119-1433

SVEHLAK, JOE
355 VANNERSON RD
ENNIS TX 75119-0094

SVEHLAK, RHONDA L
TRAVIS ELEM
355 VANNERSON RD
ENNIS TX 75119-0094

TAYLOR, CAROLYN
377 ELEVEN LEAGUE RD
ENNIS TX 75119-0298

TAYLOR , JERAD & LINDSEY
561 NOVY RD
ENNIS TX 75119

TAYLOR, JODY
377 ELEVEN LEAGUE RD
ENNIS TX 75119-0298

TAYLOR, GARY LEE
521 SHANKLE RD
ENNIS TX 75119-0105

TAYLOR, LINDSEY
561 NOVY RD
ENNIS TX 75119-1419

TROJACEK , JEFFREY
3360 E HIGHWAY 34
ENNIS TX 75119-1438

TURNER, WESLEY
7784 FM 879
PALMER TX 75152-9106

VALEK, CHRIS
380 TROJACEK RD
ENNIS TX 75119-1666

VANCE, JOHN
212 EASON RD
ENNIS TX 75119-0097

VANCE, KATHY
212 EASON RD
ENNIS TX 75119-0097

VORIS, MRS PAMELA
275 NOVY RD
ENNIS TX 75119-1484

WACHSMAN, KEVIN
2004 PARKER HILL RD
PALMER TX 75152-9734

WAGONER, MAX
204 W PROUT ST
HILL CITY KS 67642-1434

WAGONER, VICKI
204W PROUT ST
HILL CITY KS 67642-1434

WARNER, MR JOSH
645 SHANKLE RD
ENNIS TX 75119-0107

WARNER, MRS MARY
645 SHANKLE RD
ENNIS TX 75119-0107

WEATHERFORD, JOE
6004 WOODMEADOW DR
ARLINGTON TX 76016-4420

WESTBROOK , IODD
317 SHANKLE RD
ENNIS TX 75119-0101

WINTERS , JILL A
109 HUMMINGBIRD LN
OVILLA TX 75154-1647

WITHERSPOON , GARY D
LRM PTM PARTNERS LP
STE 425
2525 KNIGHT ST
DALLAS TX 75219-3323

YORK, CATHY
103 MEADOWLARK DR
PALMER TX 75152-8244

ZAPLETAL , DANNY
6635 FM 879
ENNIS TX 75119-1035

ZAPLETAL , YVONNE
6635 FM 879
ENNIS TX 75119-1035

ZETT , DIANA
1820 NECK RD
PALMER TX 75152-4321

ZHANEL , JACOB
1160 SHANKLE RD
ENNIS TX 75119-0116

ZINK , CHERYL & RANDALL T
7946 FM 879
PALMER TX 75152

ZINK , CHERYL L
7946 FM 879
PALMER TX 75152-9118

ZMOLIK , MARK & MELISSA
PO BOX 2058
LAMPASAS TX 76550-0017